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IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 446

AMBASSADOR, INC., WASHINGTON-ANNAPOLIS HOTEL COMPANY, DAVID A. BAER and ROBERT O. SCHOLZ, a Partnership, *et al.*,

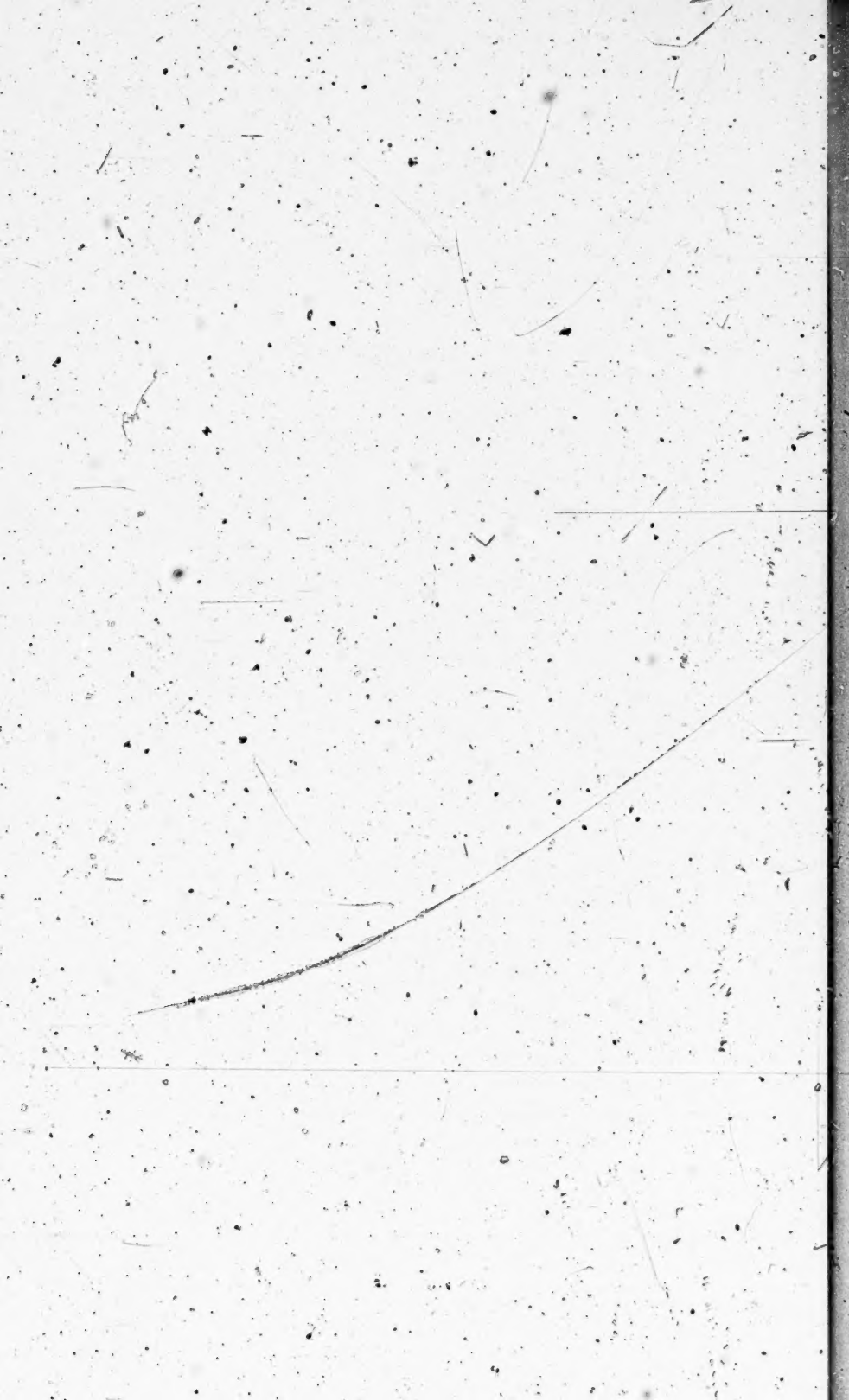
Petitioners,

v.

UNITED STATES OF AMERICA, AMERICAN TELEPHONE & TELEGRAPH COMPANY, *et al.*

APPELLANTS' PETITION FOR REHEARING

PARKER MCCOLLESTER,
GEORGE DEFOREST LORD,
JOSEPH W. WYATT,
Counsel for Petitioners.



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APPELLANTS' PETITION FOR REHEARING

Come now the above-named petitioners and present this their petition for a rehearing of the above-entitled cause, and in support thereof, respectfully show:

The case was argued on March 9 and 12, 1945. The opinion of this Court on which the rehearing is requested was written by Mr. Justice JACKSON and handed down on May 21, 1945. Mr. Justice BLACK and Mr. Justice DOUGLAS took no part in the consideration or decision of the case.

As grounds for the rehearing sought, petitioners allege: (1) that this Court incorrectly rested its conclusions upon the provisions of Sections 201 and 202 of the Communications Act of 1934, as amended, whereas this proceeding was instituted at the request of the Federal Communications Commission, and at its election, solely under the provisions of Section 203 of said Act and was brought to enjoin an alleged violation of that section only (R. 4, 8); (2) the Court

failed to give proper effect to the language of Section 203; and (3) the Court failed to decide questions whose determination is essential.

It was alleged by the Commission and decided by the court below that the petitioners were guilty of a violation of Section 203 in failing to discontinue service charges to their guests in conformity with a tariff provision filed by the telephone companies, reading as follows:

> "Message toll telephone service is furnished to hotels, apartment houses and clubs upon the condition that use of the service by guests, tenants, members or others shall not be made subject to any charge by any hotel, apartment house or club, in addition to the message toll charges of the Telephone Company as set forth in this tariff."

The Court Quoted and Applied the Wrong Section of the Act

The Court's opinion seems to proceed from the impression, stated on page 6* of the opinion, that the position of the hotel appellants rests upon the claim "that the regulation in question is unlawful because it is unreasonable." It is perhaps this impression which caused the Court to rest its opinion upon the provisions of Sections 201 and 202, which require that the charges, practices, classifications, regulations, facilities or services of common carrier wire communication carriers shall be just, reasonable and non-discriminatory. This in turn has probably led the Court to its conclusion that the hotels must seek their relief from the regulation by complaint to the Commission.

The contentions of the hotel appellants in so far as this suit is concerned do not, however, rest upon the claim that the regulation is unreasonable. Whether reasonable or unreasonable, it is submitted that the regulation is not one which by Section 203 is to be published in a tariff filed with

* All references to the opinion are to the page of the pamphlet opinion.

the Commission, and non-observance of which constitutes a violation of the very precise and rather limited provisions of that Section.

The provisions of Section 203 deal only with the filing of and compliance with tariffs. It is the only section of the Act which contains any reference as to the type of tariffs which may be filed with the Commission or the type of classifications, practices or regulations which such *filed* tariffs may contain.

More specifically Section 203(a) requires filing with the Commission by a common carrier of

> "schedules showing all charges for itself and its connecting carriers for interstate and foreign wire or radio communication * * * and showing the classifications, practices, *and regulations affecting such charges.*" (Italics ours.)

Section 203(b) provides that no change shall be made in the "charges, classifications, regulations or practices which have been so filed" except under certain circumstances; and Section 203(c) provides that no carrier shall engage in such communication unless the schedules have been filed, and that no carrier shall

> "employ or enforce any classifications, regulations, or practices *affecting such charges*, except as specified in such schedule." (Italics ours.)

It therefore appears clearly that as far as classifications, practices and regulations are concerned, the entire section under which this suit is brought relates only to those classifications, practices and regulations "affecting such charges", *i. e.*, the charges of the common carriers who were appellees here.

Appellant hotels argued that the prohibition against service charges in the tariff quoted above did not *affect* the carriers' charges. Although this appeared to be the most important issue in the case, the opinion made no attempt to interpret the phrase "affecting such charges" and made no finding as to whether the prohibition

against service charges by the hotel appellants in the telephone companies' tariff fell within the scope of the phrase last quoted. Probably for the reasons previously stated, it assumed that the Commission's powers relating to this suit under Section 203 were to be determined by reference to, and were co-extensive with the authority under the provisions of Sections 201(b) and 202, which, however, employ quite different and much broader language. This conclusion of the Court will be found on page 5 of the opinion. It there states:

> "The supervisory power of the Commission is not limited to rates and to services, but the formula oft repeated in the Act to describe the Commission's range of power over the regulated companies is 'charges, practices, classifications, and regulations *for and in connection with such communication service.*'" (Italics ours.)

Although the language last quoted is referred to as "a formula oft repeated", it does not once appear in the provisions of Section 203, under which this suit is brought.

The provisions of Sections 201 and 202 require briefly—201(b), that all charges, classifications, practices and regulations shall be just and reasonable; and 202(a), that it shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, etc., "for or in connection with like communication service". The phrase "for and in connection with such communication service" (Section 201) and the similar phrase in Section 202 are much broader in scope than the phrase in Section 203(a) and (c) "affecting such charges". Almost any regulation relating to supplying telephone service would be "for and in connection with such communication service"; whereas, not every such regulation would be one "affecting such charges".

The opinion of the Court, at page 5, after referring to the provisions of Section 201(b) of the Communications Act, providing that

"All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable,"

says

"All of these must be filed with the Commission in the form it prescribes,"

referring to Section 203 of the Act. As a matter of fact, Section 203 of the Act does not provide that *all* charges, classifications, practices and regulations shall be filed with the Commission, but only that charges *of the carriers* and classifications, practices and regulations affecting *such charges* must be so filed. Indeed, there are many practices and regulations made in connection with charges of carriers which, although they fall under the requirement of reasonableness, are not required to be filed as a part of a tariff. As an example of the kind of practices and regulations that are not filed as a part of a tariff, the Court's attention is directed to Telephone Company Exhibit No. 6 (R. 284) (the form of contract for service offered by the telephone companies to hotels) which was not a part of the tariff, but which plainly falls within the requirement of justness and reasonableness in respect of its provisions.

The Issue Is Not One of Reasonableness

There is no provision in Section 203 which relates in any way to the reasonableness or unreasonableness of the tariff sought to be enforced. The section includes only regulations which affect the charges of the telephone carrier. By basing its conception of the Commission's authority to bring this suit on Sections 201 and 202, the Court fell into the error of concluding that the question before it was one of reasonableness rather than jurisdiction to enforce the Act under Section 203. The hotel appellants in this Court contended that the tariff provision was invalid because it was not a regulation affecting the carriers' charges required to be filed under Section 203 of the Act, departure from

which could become the basis of a suit for enforcement under that section and Section 401(c) of the Act.

The Restriction Against Service Charges Does Not "Affect" the Carriers' Charges

Since the Court based its conception of the Commission's powers on a section not in issue in this suit, it also arrived at the further erroneous conclusion that it was of no consequence whether the hotels were agents or subscribers or whether the relationship fitted into some common law category. Since Section 203 relates solely to the charges of the carriers and the classifications, practices and regulations affecting such charges (*i. e.*, the carriers' charges), the hotels' charges could only become the subject of scrutiny if they were made by the hotels as agents for the carriers and consequently became the carriers' charges. The determination whether the hotels were agents or subscribers of the telephone companies did not, therefore, involve merely an "attempt to fit the regulated relationship into some common-law category" (Opinion, p. 7). Upon this determination depended whether or not the regulation *affected* the charges of a carrier for wire communication service and therefore came within Section 203.

The question of whether the restriction against service charges by the hotels is one "affecting" the carriers' charges is dealt with in the briefs filed by the hotels (Appellants' brief, pp. 46, *et seq.*; Appellants' reply brief, pp. 11, 12, 13) and requires no further elaboration here. The telephone companies argued (brief, pp. 6 and 7) that

> "The regulation which prohibits hotels from imposing surcharges on toll calls made by guests is a proper element in the description of the service *because it is a limitation on the use that may be made of the service.*" (Italics ours.)

Consequently, they argued, the prohibition in question is a regulation "affecting" the charges of the telephone com-

panies. This argument leads inevitably to the conclusion that if the former service were reduced by the limitation, the toll rates should also be reduced. The record is barren of any evidence that the limitation against surcharges in the tariff resulted in any variation of the rate at all. This argument of the telephone companies that the limitation against service charges shows the value of the service rendered would, in effect, read into the Communications Act the language used in the Interstate Commerce Act. Section 6 of the Interstate Commerce Act provides that schedules filed by common carriers shall state separately any terminal charges, etc., which affect "the value of the service rendered". The absence of such language in the Communications Act shows plainly that Congress intended that schedules required to be filed under Section 203 and enforceable thereunder should deal only with the *charges* of carriers and with classifications, regulations or practices *affecting such charges.*

The Court Failed to Decide Questions Whose Determination is Essential

One of the principal issues in the case was whether the service supplied by the hotels between the PBX boards and the rooms was "wire communication" as defined under Section 3(a) of the Communications Act (47 U. S. C. 153(a)). The Commission argued that such communication was "wire communication". (Brief for United States, pp. 14, 15.). Counsel for the telephone companies on the argument in this Court took the position that such service was not "wire communication" (Stenographic Minutes of Argument, p. 65), which is in accord with the position taken by the hotels. (Appellants' Reply Brief, pp. 4, 5.)

If, despite the foregoing considerations, the tariff regulation is held to be one within the purview of Section 203, there would remain, as the Court has held, the question of its reasonableness which would be an appropriate subject for further proceedings before the Commission. In such proceedings the issue will arise whether or not the service

between the PBX. board and the rooms is "wire communication". If it is "wire communication" the cost will have to be borne by the telephone companies. If it is not, the cost will fall on the hotels. Until this issue is decided, further proceedings before the Commission will be futile. If re-argument is granted, it would seem that this Court should also decide this important issue.

For the foregoing reasons it is respectfully urged that this petition for a rehearing be granted, and that the judgment of this Court be, upon further consideration, reversed.

Respectfully submitted,

PARKER McCOLLESTER,
GEORGE DEFOREST LORD,
JOSEPH W. WYATT,
Counsel for Petitioners.

Certificate of Counsel

I, PARKER McCOLLESTER, counsel for the above named appellants, do hereby certify that the foregoing petition for a rehearing of this cause is presented in good faith and not for delay.

PARKER McCOLLESTER,
Counsel for Petitioners

June 14, 1945

APPENDIX

Pertinent Provisions of the Communications Act of 1934

(June 19, 1934, 48 Stat. 1064 ff., 47 U. S. C. §§ 151 ff.)

SECTION 201:

(a) It shall be the duty of every common carrier engaged in interstate or foreign communication by wire or radio to furnish such communication service upon reasonable request therefor; and, in accordance with the orders of the Commission, in cases where the Commission, after opportunity for hearing, finds such action necessary or desirable in the public interest, to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes.

(b) All charges, practices, classifications, and regulations for and in connection with such communication service, shall be just and reasonable and any such charge, practice, classification, or regulation that is unjust or unreasonable is hereby declared to be unlawful:

SECTION 202:

(a) It shall be unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities or services for or in connection with like communication service, directly or indirectly, by any means or device, or to make or give any undue or unreasonable preference or advantage to any particular person, class of persons, or locality, or to subject any particular person, class of persons, or locality to any undue or unreasonable prejudice or disadvantage.

SECTION 203:

(a) Every common carrier, except connecting carriers, shall, within such reasonable time as the Commission shall

designate, file with the Commission and print and keep open for public inspection schedules showing all charges for itself and its connecting carriers for interstate and foreign wire or radio communication between the different points on its own system, and between points on its own system and points on the system of its connecting carriers or points on the system of any other carrier subject to this chapter when a through route has been established, whether such charges are joint or separate, and showing the classifications, practices, and regulations affecting such charges. Such schedules shall contain such other information, and be printed in such form, and be posted and kept open for public inspection in such places, as the Commission may by regulation require, and each such schedule shall give notice of its effective date; and such common carrier shall furnish such schedules to each of its connecting carriers, and such connecting carriers shall keep such schedules open for inspection in such public places as the Commission may require.

(b) No change shall be made in the charges, classifications, regulations, or practices which have been so filed and published except after thirty days' notice to the Commission and to the public, which shall be published in such form and contain such information as the Commission may by regulations prescribe; but the Commission may, in its discretion and for good cause shown, modify the requirements made by or under authority of this section in particular instances or by a general order applicable to special circumstances or conditions.

(c) No carrier, unless otherwise provided by or under authority of this chapter, shall engage or participate in such communication unless schedules have been filed and published in accordance with the provisions of this chapter and with the regulations made thereunder; and no carrier shall (1) charge, demand, collect, or receive a greater or less or different compensation for such communication, or for any service in connection therewith, between the points

named in any such schedule than the charges specified in the schedule then in effect, or (2) refund or remit by any means or device any portion of the charges so specified, or (3) extend to any person any privileges or facilities in such communication, or employ or enforce any classifications, regulations, or practices affecting such charges, except as specified in such schedule.

(d) The Commission may reject and refuse to file any schedule entered for filing which does not provide and give lawful notice of its effective date. Any schedule so rejected by the Commission shall be void and its use shall be unlawful.

(e) In case of failure or refusal on the part of any carrier to comply with the provisions of this section or of any regulation or order made by the Commission thereunder, such carrier shall forfeit to the United States the sum of $500 for each such offense, and $25 for each and every day of the continuance of such offense.

SUPREME COURT OF THE UNITED STATES.

No. 446.—October Term, 1944.

Ambassador, Inc., Washington-Annapolis Hotel Company, David A. Baer and Robert O. Scholz, a Partnership, et al., Appellants, *vs.* The United States of America, American Telephone & Telegraph Company, et al.	Appeal from the District Court of the United States for the District of Columbia.

[May 21, 1945.]

Mr. Justice Jackson delivered the opinion of the Court.

This action was instituted at request of the Federal Communications Commission in the District Court of the United States for the District of Columbia. The Chesapeake & Potomac Telephone Co., which is engaged in rendering telephone service in the District of Columbia, and the American Telephone and Telegraph Co. were made defendants, as also were the appellants, comprising the proprietors of twenty-seven hotels in the District of Columbia. The complaint asks and the court below has granted an injunction which forbids the hotels to make charges against their guests in connection with any interstate or foreign message toll service to or from their premises, other than the toll charges of the telephone companies and applicable federal taxes. The prohibition is based on a provision to that effect in the tariff filed by the telephone companies. Upon the trial, evidence was limited by stipulation to the facts about the Shoreham Hotel, accepted as typical of all defendants.

Telephone service is available to patrons of the hotel without a charge by the hotel. In or near the lobbies, telephone booths have direct connection with telephone company central offices. Calls can there be made without involving the services of the hotel personnel and at the usual tariff rates of the telephone company paid through its coin boxes.

However, modern hotel standards require that telephone service also be made available in the rooms. Equipment for this purpose

is specified by the hotel but is installed and owned by the telephone company. The hotel pays a monthly charge for its use, and its operation is at the hotel's expense. The operating cost is substantial, rentals of the Shoreham in 1943 being $8,680.10 and payrolls for operation amounting to $21,895.62.

Typical equipment consists of a private branch exchange, known as a PBX board, connected with a number of outside or trunk lines and also with extension lines to each serviced room, and other items. This equipment permits calls for various kinds of room service, communication between guests, and calls from station to station within the hotel for which no use of other lines of the telephone company is necessary. The same switchboard and its hotel-employed operators also handle both incoming and outgoing calls for guests, including many long distance messages.

So far as the telephone company is concerned, the toll message coming to its central office from the hotel switchboard is handled much as a similar message from a residence or business station. Within the hotel, however, room telephone service necessitates additional labor as well as use of the equipment. When a call is made from the station in a room, it is placed with the switchboard operator employed by the hotel, and she in turn places the call with the telephone company's long distance operator. It is customary also to render services described as secretarial. Incoming messages may be received during the guest's absence and memoranda of them are made for and delivered to him. Outgoing messages may be transmitted for the guest. Information as to his whereabouts may be left with the operator for communication to callers; he may arrange to be reached at other locations than his room; he may arrange to have telephone service suspended for a period; incoming calls may be limited to those from designated persons, and various other services helpful to comfortable living are supplied by those in charge of the interior telephone system.

Each long distance call placed through the hotel's switchboard is charged by the telephone company to the hotel, not to the guest. The hotel pays the charge and is reimbursed, less credit losses, by collections from the guest. The reimbursement item is separately stated on the guest's bill and is not itself involved in this controversy.

The hotel also seeks to recoup the cost of its service, including equipment rentals, and perhaps some margin of profit, by a service charge to the guests who make long distance calls from their rooms. This charge varies in different hotels but this typical case shows charges of ten cents for toll calls where the telephone tariff is one dollar or less, ten percent of the telephone tariff where the charge is more than one dollar, with a maximum of three dollars per call. This service charge appears on the guest's bill as a separate item, but is stated, like the reimbursement charge as "Long distance", abbreviated to "LDIST".

In January 1942, a proceeding was instituted by the Federal Communications Commission for the purpose of determining whether the charges collected by hotels, apartment houses and clubs in the District of Columbia in connection with interstate and foreign telephone communication were subject to the jurisdiction of the Commission under the Communications Act and what tariffs, if any, should be filed with the Commission showing such charges. No such tariffs were on file with the Commission at the time the proceeding was instituted.

The Commission, December 10, 1943, found that it does have jurisdiction under the Communications Act over the charges collected by hotels and others and ruled that, if such charges are to be collected at all, they must be shown on tariffs on file with the Commission. It thought that the hotel should be regarded as the agent of the telephone companies. It issued an order directing the two telephone companies either to file appropriate tariffs showing charges collected by the hotels in connection with interstate and foreign telephone communications or to file an appropriate tariff regulation containing a specific provision with respect to conditions under which such interstate and foreign service would be furnished to hotels, apartment houses and clubs.

Confronted with these alternatives, The Chesapeake & Potomac Telephone Company filed a tariff provision in which the American Telephone & Telegraph Company concurred, which reads as follows:

'Message toll telephone service is furnished to hotels, apartment houses and clubs upon the condition that use of the service by guests, tenants, members or others shall not be made subject to any charge by any hotel, apartment house or club in addition to the message toll charges of the Telephone Company as set forth in this tariff.'

This tariff provision became effective by its terms February 15, 1944. Four days later, this suit was instituted to enjoin the hotels from collecting charges made in violation of the tariff provision, and to enjoin the telephone companies from furnishing such service to these hotels or others which continued to make charges.

The District Court sustained the validity of the tariff.[1] It regarded the hotels as subscribers rather than as agents of the telephone companies. It held that the tariff was violated by collection of surcharges from guests who make interstate or foreign long distance telephone calls or receive such calls "collect". The court did not pass upon the justness or reasonableness of the tariff, being of opinion that such questions were in the first instance to be submitted to and determined by the Commission in appropriate proceedings. An injunction issued against the hotels but not against the telephone companies, the court, however, retaining jurisdiction over the proceedings as to all defendants for the purpose of issuing such further orders as might be necessary to effectuate its decision. Direct appeal was taken by the hotel defendants to this Court.[2]

It has long been recognized that if communications charges are to correspond even roughly to the cost of rendering the service, the use to which telephone installations may be put by subscribers must be subject to some kind of classification and regulation which will conform the actual service to that contracted for. Familiar examples are the classification of residence as against business service with a requirement that the subscriber confine his use of the instruments accordingly. Of course, the subscriber who installs a private branch exchange with multiple trunk lines and many extensions has obviously contracted for a class of service different from one whose installation consists of a single station. One of the problems incident to the service of a subscriber who takes facilities greatly in excess of his own needs in order to accommodate others is to fix upon what terms he may extend the use of telephone facilities to others. This is an aspect of the

[1] The opinion was rendered orally and is not reported.

[2] Pursuant to Section 2 of Expediting Act, 32 Stat. 823; 36 Stat. 1167; 15 U. S. C. § 29; 49 U. S. C. § 45; and Communications Act of 1934, 48 Stat. 1093, 47 U. S. C. § 401(d). Also § 238(1) of Judicial Code as amended, 43 Stat. 938, 28 U. S. C. § 345(1).

problem of resale of utility service which is not confined to the telephone business.[3]

The Communications Act of 1934 recognizes that tariffs filed by communications companies may contain regulations binding on subscribers as to the permissible use of the rented communications facilities. The supervisory power of the Commission is not limited to rates and to services, but the formula oft repeated in the Act to describe the Commission's range of power over the regulated companies is "charges, practices, classifications, and regulations for and in connection with such communication service". 48 Stat. 1070, 47 U. S. C. § 201(b). It is in all of these matters that the Act requires the filed tariffs to be "just and reasonable" and declares that otherwise they are unlawful.[4] By none of these devices may the companies perpetrate an unjust or unreasonable discrimination or preference.[5] All of these must be filed with the Commission in the form it prescribes, may not be changed except after due notice, and must be observed in the conduct of its business by the company.[6] These provisions clearly authorize the companies to promulgate rules binding on PBX subscribers as to the terms upon which the use of the facilities may be extended to others not themselves subscribers.

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[3] Cf. Re New York Telephone Co., 26 P. U. R. (N. S.) 311 (N. Y. 1938), 30 P. U. R. (N. S.) 350 (N. Y. 1939); People *ex rel.* Public Service Commission *v.* New York Telephone Co., 262 App. Div. 440 (1941), aff'd without opinion, 287 N. Y. 803; Hotel Pfister *v.* Wisconsin Telephone Co., 203 Wis. 20 (1930); Jefferson Hotel Co. *v.* Southwestern Bell Telephone Co., 15 P. U. R. (N. S.) 265 (Mo. 1936); Re Hotel Marion Co., P. U. R. 1920 D, 466 (Ark. 1920); Connolly *v.* Burleson, P. U. R. 1920 C, 243 (N. Y. 1920); Re Hotel Telephone Service and Rates, P. U. R. 1919 A, 190 (Mass. 1918); Hotel Sherman Co. *v.* Chicago Telephone Co., P. U. R. 1915 F, 776 (Ill. 1915); 1015 Chestnut Street Corp. *v.* Bell Telephone Co. of Pennsylvania, P. U. R. 1931 A, 19, 7 P. U. R. (N. S.) 184 (1930, 1934); Budd *v.* Southwestern Bell Telephone Co., 28 P. U. R. (N. S.) 235 (Mo. 1939).

Remetering of electric energy creates similar problems of regulation, often dealt with by tariff prohibition of remetering. See Lewis *v.* Potomac Electric Power Co., 64 F. 2d 701 (App. D. C. 1933); Karrick *v.* Potomac Electric Power Co., P. U. R. 1932 C, 40 (D. C. Sup. Ct. 1931); Florida Power & Light Co. *v.* Florida, 107 Fla. 317 (1932); Sixty-seven South Munn *v.* Board of Public Utility Commissioners, 106 N. J. Law 45 (Sup. Ct. 1929), aff'd 107 N. J. Law 386 (Court of Errors and Appeals 1930), cert. denied, 283 U. S. 828; Public Service Commission *v.* J. & J. Rogers Co., 184 App. Div. 705 (N. Y. 1918); People *ex rel.* N. Y. Edison Co. *v.* Public Service Commission, 191 App. Div. 237 (N. Y. 1920), aff'd, 230 N. Y. 574 (1920).

[4] 47 U. S. C. § 201.

[5] 47 U. S. C. § 202.

[6] 47 U. S. C. § 203(a), (b), (c).

Of course, such authority is not unlimited. The telephone companies may not, in the guise of regulating the communications service, also regulate the hotel or apartment house or any other business. But where a part of the subscriber's business consists of retailing to patrons a service dependent on its own contract for utility service, the regulation will necessarily affect, to that extent, its third party relationships. Such a regulation is not invalid *per se* merely because, as to the communications service and its incidents, it places limitation upon the subscriber as to the terms upon which he may invite others to communicate through such facilities.

It is urged, however, that the regulation in question is unlawful because it is unreasonable. It is said that it invades the relationship between hotel and guest excessively, and denies to the hotel the right reasonably to recoup its cost and to profit by the services it renders. But we agree with the District Court that where the claim of unlawfulness of a regulation is grounded in lack of reasonableness, the objection must be addressed to the Commission and not as an original matter brought to the court. We think that the Act confers jurisdiction upon the Commission to hear appellants' grievances against the substance of this regulation. Indeed, appellants inform us that the American Hotel Association, on behalf of its members, including the appealing hotels, has filed a formal complaint with the Commission alleging that the new provision of the tariff schedule was unreasonable discriminatory and unlawful, and asking for investigation and, at the same time, asserting that the tariff was illegal. Action on that complaint has been held in abeyance by the Commission pending the final decision on the jurisdictional question in this suit.

It is clear that the charges being made in this case violate the regulation. The charges made are not based on the service rendered by the hotel but vary in accordance with the toll charge made by the telephone company for communications services. So far as appears, the service rendered by the hotel in handling a guest's toll call from Washington to Baltimore is substantially the same as for a call to San Francisco. But for like service, the charge varies with the amount of the telephone tariff for the communication. The guest's charges are so identified with the communications service that they are brought within the prohibitions of this regulation.

Since the regulation, apart from questions of reasonableness which must be presented to the Commission, is a valid regulation of the subscriber's use of the telephone facilities involved, a departure from the regulation is forbidden by the Act and the prosecution of an action to restrain a violation is authorized.[7] When an action for enforcement is instituted in any District Court, the Act expressly provides that it shall be lawful "to include as parties, in addition to the carrier, all persons interested in or affected by the charge, regulation or practice under consideration", and decrees may be made against such parties in the same manner and to the same extent as authorized with respect to carriers.[8] One can hardly gainsay the Government's assertion that the appellants here are persons interested in and affected by the regulation in question and, therefore, are proper parties defendant in the action and injunction could properly issue against them.

It is urged, however, that inasmuch as the Court did not enjoin the telephone companies, the hotels should not be enjoined. Four days after the effective date of this regulation, the hotels had indicated no intention to comply with it although they had had due notice. It was well within the discretion of the trial court to conclude that this justified an injunction. Four days of default by the subscriber, however, might not be regarded as requiring an injunction which would compel the telephone companies to cut off service on which many persons rely. We are unable to see that the hotels have been prejudiced by the failure to enjoin the telephone companies or are in a position to complain of the omission of what would have been an additional hardship to themselves.

Much has been said in argument about the theory of the relationship between the hotel and the telephone company and the discrepancy between the view of the Commission that the contract created an agency and that of the District Judge who said that the evidence fails to show that the hotels are agents of the telephone company, and held that "the hotels are subscribers". We do not think it is necessary in determining the application of a regulatory statute to attempt to fit the regulated relationship into some common-law category. It is sufficient to say that the

[7] 47 U. S. C. § 401.
[8] 47 U. S. C. § 411.

relation is one which the statute contemplates shall be governed by reasonable regulations initiated by the telephone company but subject to the approval and review of the Federal Communications Commission.

Without prejudice to determination by the Commission of any of the questions raised in this case, we hold that the injunction was properly issued and the judgment below is

Affirmed.

Mr. Justice BLACK and Mr. Justice DOUGLAS took no part in the consideration or decision of this case.